**Manley Truck Line, Inc. *and* Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent).** Case 13-CA-23356

31 July 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 9 February 1984 Administrative Law Judge Lowell Goerlich issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

### AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 4.

"4. By instituting wage deferrals on 4 March and 1 July 1983, the Respondent effected a midterm modification of its labor agreement with the Union in violation of Section 8(d) of the Act and thereby violated Section 8(a)(5) and (1) of the Act."

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Manley Truck Line, Inc., Hodgkins, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Forthwith commence to pay without deferral or deductions (except those required by law) full wages to its employees who are covered by the current labor agreement between the Respondent and the Union and who have not voluntarily authorized such deferral or deductions, in conformity with the provisions of the agreement, and to reimburse and make whole any such employee covered by the agreement the amount of any moneys deferred or withheld without consent from his or her wages as set forth in the section of this decision entitled 'The Remedy.'"

2. Substitute the attached notice for that of the administrative law judge.

### APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) in the appropriate unit described below in violation of Section 8(d) of the National Labor Relations Act, as amended, by continuing the deferral of our Chicago terminal employees' wages in violation of our labor agreement with the Union without the consent of the Union. The appropriate unit is:

> All helpers and drivers, but excluding all other employees and all guards and supervisors as defined in the Act.

WE WILL NOT unlawfully threaten to close our Hodgkins, Illinois facility if our employees do not agree to waive contractual rights.

WE WILL NOT unlawfully threaten our employees with discharge because they refuse to waive contractual rights and because they cooperate in a Board investigation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL forthwith commence to pay without deferral or deductions (except those required by law) full wages to our employees who are covered by our labor agreement with the above-named Union and who have not voluntarily authorized such deferral or deductions, in conformity with the provisions of the agreement, and to reimburse and make whole any such employee covered by the agreement the amount of any moneys deferred or

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[1] We agree with the judge's findings, but note that *W.R. Grace & Co. v. Rubber Workers Local 759*, 103 S.Ct. 2177 (May 31, 1983), is not controlling.

The word "agreement" in fn. 4 of the judge's decision should be "argument."

The Respondent filed no exception to the finding that it violated Sec. 8(a)(1) by threatening plant closure and discharge.

[2] The judge's recommended remedy, Order, and notice require that the Respondent reimburse all employees in the collective-bargaining unit for withheld wages. The Respondent and the General Counsel agree that the amended complaint covered only unit employees who did not voluntarily sign authorization forms. We modify the judge's recommended remedy, Order, and notice accordingly.

Conclusion of Law 4 states that the Respondent instituted a wage deferral on 4 May 1983, although it is clear from the judge's findings of facts and the record evidence that this wage deferral began on 4 March 1983. We amend the Conclusions of Law accordingly.

withheld without consent from his or her wages together with interest thereon.

WE WILL henceforth comply fully with the wage payment requirements of the labor agreement, unless the Union has agreed that we may ask employees for a waiver of the requirements and we have received such a voluntary waiver from the employee.

## MANLEY TRUCK LINE, INC.

## DECISION

### STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge. The original charge filed on June 13, 1983, by the Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) (the Union) was served on the Manley Truck Line, Inc. (the Respondent) by certified mail on June 22, 1983. The first amended charge filed by the Union on July 19, 1983, was served on the Respondent by certified mail on July 22, 1983. A complaint and notice of hearing was issued on July 25, 1983. Among other things it was alleged in the complaint that the Respondent had made certain unilateral changes in a subsisting contract between the Union and the Respondent in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The Respondent filed a timely answer denying that it had engaged or was engaging in the unfair labor practices alleged.[1]

The case came on for hearing in Chicago, Illinois, on December 14, 1983. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record,[2] to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

On the entire record in this case, and from my observation of the witnesses and their demeanor, I make the following

### FINDINGS OF FACT, CONCLUSIONS, AND REASONS THEREFOR

#### I. THE BUSINESS OF THE RESPONDENT

At all times material herein the Respondent, a corporation, with an office and place of business in Hodgkins, Illinois, herein called the Chicago terminal, has been engaged in the interstate transportation of freight and commodities throughout the United States.

During the past calendar year, a representative period, the Respondent, in the course and conduct of its business operations described above, derived gross revenues in excess of $50,000 for the transportation of freight and commodities from the State of Illinois directly to points outside the State of Illinois.

The Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

The Charging Party is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE UNFAIR LABOR PRACTICES

The Respondent has admitted in its answer as alleged in the complaint that:

> The following employees of Respondent . . . constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:
>
> > All helpers and drivers, but excluding all other employees and all guards and supervisors as defined in the Act [the unit].

Since on or about April 13, 1981, and continuing to date the Union has been the designated representative of the unit and that since on or about April 13, 1981, the Union has been recognized as such representative by the Respondent.

The current collective-bargaining agreement between the Respondent and the Union for the unit is effective by its terms for the period April 1, 1982, through March 31, 1985.

At all times since April 13, 1981, the Union by virtue of Section 9(a) of the Act has been and is the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On March 4, 1983, after consulting with the Union the Respondent instituted a 15-percent wage deferral plan due to dire economic circumstances.

Findings are made in conformity with these admissions.

The uncontroverted evidence further discloses that the Respondent, faced with financial stress, met with the union representatives in February 1983 to discuss a proposed wage deferral plan. The Union agreed that such a plan could be implemented on a voluntary basis, that is, the deferment of wages could be effected only for those employees who individually agreed to the deferment. The Union advised the Respondent that involuntary wage deferment would be treated as a contract violation which the Union would grieve.[3] Nevertheless, a 15-per-

[1] At the hearing the Respondent withdrew its answer to par. 5(a) and (b) of the complaint.

[2] There being no opposition thereto, Respondent's motion to correct transcript is granted, and the transcript is corrected accordingly.

[3] Art. 3 of the current collective-bargaining agreement provides:

Section 8. All Employees covered by this Agreement shall be paid in full each week. Not more than five (5) days' pay may be held back but then only by an Employer who presently adheres to such program. Employees shall be paid in full when laid off or discharged. On pay day each Employee shall be provided with an itemized statement of gross earnings and all deductions for any purpose.

Art. 23, sec. 1(c), provides:

*Continued*

cent wage deferral was imposed on all Chicago unit employees by the Respondent on March 4, 1983, and such amount was withheld from their wages. A grievance was filed dated March 17, 1983, reciting: "We, the undersigned below, did not consent to Manley taking any money from our paychecks at any time. We did not give them any authority to take it out. We did not sign any papers for them to do so."[4]

On or about June 7, 1983, the Respondent again met with union representatives regarding a revision of the 15-percent deferral plan. The Respondent felt that it needed to continue a deferment but it needed a lesser amount; a 10-percent wage deferment was proposed. The Respondent was advised by the Union that, if the 10-percent wage deferment plan was implemented on other than a voluntary basis, the Union would file grievances on behalf of the employees who did not voluntarily ascribe to the plan. Nevertheless, the Respondent put in effect the 10-percent wage deferral plan on July 1, 1983, and commenced issuing the reduced wage payments to its Chicago terminal employees.

The deferral plan provided that, if the Respondent's operating ratio was 97 percent or better, it agreed to begin a payback system in the susbequent quarter.

In its brief the Respondent states: ". . . this case involves the narrow issue of whether the employer may defer wages due to economic necessity alone."

While it is clear from the record that the Respondent instituted the involuntary wage deferment plans in order to alleviate its financial plight, the Respondent, which urges that it be excused from a violation of the Act for such reasons, has cited no authority which frees an employer from his duty to conform with a labor agreement because it fears the probability of a financial disaster. The Supreme Court in the case of *W.R. Grace & Co. v. Rubber Workers Local 759*, 113 LRRM 2641, 2647, 97 CCH LC ¶ 10,131 (5th Cir. 1983), has said, "Absent a judicial determination . . . the Company, cannot alter the collective bargaining agreement without the Union's consent. . . . Permitting such a result would undermine the federal labor policy that parties to a collective bargaining agreement must have reasonable assurances that their contract will be honored." Section 8(d) of the Act makes it clear that a party to a labor agreement is not required "to discuss or agree to any modifications of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract." Moreover, under the circumstances revealed in this record, Section 8(d) required the Respondent, as its duty to bargain, to refrain from modifying the aforesaid labor agreement.

Financial stress is not cited as an exception in the statute. In this regard the Board in the case of *Airport Limousine Service*, 231 NLRB 932 (1977), reiterated the rule verbatim from the case of *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973):

> We have no doubt that Respondent's description of its motive and its object is a truthful one. But we have here a situation where these considerations are irrelevant. The unambiguous language of Section 8(d) of the Act explicitly: (1) forbade Respondent's midterm modification of the contract's wage provisions without the Union's consent; and (2) granted the Union the privilege it exercised to refuse to grant consent. Nowhere in the statutory terms is any authority granted to us to excuse the commission of the proscribed action because of a showing of either that such action was compelled by economic need or that it may have served what may appear to us to be a desirable economic objective. To borrow the words of the Supreme Court, what must here be recognized is that "[t]he law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts [and of the Board] cannot be set up against it in the supposed accomodation of its policy with the good intentions of the parties, and, it may be, of some good results." *Standard Sanitary Mfg. Co. v. U.S.*, 266 U.S. 2049.

Since the Respondent's institution of the wage deferral plans constituted a midterm modification of its labor agreement in violation of Section 8(d) of the Act, the Respondent thereby violated Section 8(a)(5) of the Act. See *Fourco Glass Co.*, 250 NLRB 953, 955 (1980); *Michigan Drywall Corp.*, 232 NLRB 120 (1977).

The Respondent withdrew its answer to the following allegations in the complaint:

> On or about June 22, 1983, Respondent, acting through Gene Scott, at Respondent's facility:
>
> (a) threatened that Respondent would close Respondent's facility if the employees did not agree to waive contractual rights.
>
> (b) threatened an employee with discharge because he refused to waive contractual rights and because he cooperated in a Labor Board investigation.

Findings are made in accordance with these allegations and the Respondent is found to have violated Section 8(a)(1) of the Act.

## CONCLUSIONS OF LAW

1. Manley Truck Line, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent), is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit constitutes an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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No Employer shall put into effect any new plan of an economic nature affecting Employees (such as incentive plans, sick leave schedules, piece rate plans, etc.) without first checking with and securing the approval of the Union.

It is these provisions of the agreement which the Respondent violated.

[4] On p. 9 of the Respondent's brief it is stated: "The parties have also agreed that there is no agreement that the Board should defer to the grievance proceedings herein which were deadlocked." I find accordingly. Thus *United Technologies Corp.*, 268 NLRB 557 (1984), is not applicable.

All helpers and drivers, but excluding all other employees and all guards and supervisors as defined in the Act.

4. By instituting wage deferrals on May 4 and July 1, 1983, the Respondent effected a midterm modification of its labor agreement with the Union in violation of Section 8(d) of the Act and thereby violated Section 8(a)(5) and (1) of the Act.

5. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Respondent engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

It is recommended that the Respondent cease and desist from its unfair labor practices and take certain affirmative action deemed necessary to effectuate the purposes of the Act.

It is further recommended that the Respondent cease and desist from making any wage deferrals or withholding any moneys from its unit employees' wages at its Chicago terminal without the consent of the Union or except as is provided by the current labor agreement between the Respondent and the Union and that all those employees covered by said agreement from whom the Respondent has deducted and withheld wages shall be forthwith reimbursed for the amounts of the wages so deducted and withheld together with interest therein to be computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977), (See generally *Isis Plumbing Co.*, 138 NLRB 176 (1962).)

On the basis of these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

## ORDER

The Respondent, Manley Truck Line, Inc., Hodgkins, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent), in the appropriate unit described below in violation of Section 8(d) of the Act by continuing the deferral of its Chicago terminal employees' wages in violation of its labor agreement with the Union without the prior consent of the Union. The appropriate unit is:

All helpers and drivers, but excluding all other employees and all guards and supervisors as defined in the Act.

(b) Unlawfully threatening to close Respondent's facility if the employees do not agree to waive contractual rights.

(c) Unlawfully threatening an employee or employees with discharge because they refuse to waive contractual rights and because they cooperate in a Board investigation.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Forthwith commence to pay without deferral or deductions (except those required by law) full wages to its employees covered by the current labor agreement between the Respondent and the Union in conformity with the provisions of such agreement and to reimburse and make whole forthwith any employee covered by said labor agreement the amount of any moneys deferred or withheld from his or her wages as set forth in the section of this decision entitled "The Remedy."

(b) Comply fully with the wage payment requirements of the current labor agreement between the Respondent and the Union.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Hodgkins, Illinois facility (Chicago terminal) copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act other than those found in this decision.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."